

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID S. RALSTON II,)	4:04CV3135
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
JO ANNE B. BARNHART,)	
Commissioner of Social Security)	
Administration,)	
)	
Defendant.)	

This matter is before the court upon Plaintiff's application for attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 (filing 22). The Commissioner has filed a response (filing 23) stating that she has no objection to the Plaintiff's request for the award of fees in the amount of \$4,369.55 (28.1 hours of attorney time at \$155.50¹ per hour).

The court has determined that Plaintiff was indeed the prevailing party in this action, as this action was remanded to the Secretary for further action; that the application for fees was filed in a timely fashion²; and that the position of the Commissioner was not substantially justified. Therefore, Plaintiff is entitled to an award of attorney fees.

The Commissioner's response requests that the fees be made payable directly

¹This average hourly rate equals the statutory maximum of \$125.00, adjusted on a monthly basis to account for inflation since April 1996. (Filing 22, exhibit C.)

²An EAJA fee application based on a district court judgment remanding a case pursuant to sentence four of 42 U.S.C. § 405(g) must be filed within 90 days of the sentence four judgment. Shalala v. Schaefer, 509 U.S. 292, 302 (1993).

to Warren L. Reimer, attorney for Plaintiff. I will so order.

IT IS ORDERED:

1. Plaintiff's application for attorneys fees pursuant to the Equal Access to Justice Act (filing 22) is granted;
2. By separate document, the court shall enter judgment for Plaintiff and against Defendant providing that Plaintiff is awarded attorney fees in the amount of \$4,369.55.
3. Payment shall be made by check payable directly to the attorney for Plaintiff, Warren L. Reimer.

August 31, 2005.

BY THE COURT:

s/Richard G. Kopf
United States District Judge